

Special Civil Application No 3020 of 1983

Date of decision: 07th February 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

DEVILAL GOLJIBHAI SHAH

vs

KC SAGAR

Appearance:

Shri M.K.VAKHARIA, Advocate, for the Petitioner.

Shri D.N.PATEL, Assistant Government Pleader, as instructed by Messrs Purnanand & Company, for Respondents Nos.1 and 2.

Respondent No.3 served.

Coram : MR.JUSTICE A.N.DIVECHA

07th February 1996

ORAL JUDGEMENT

The order passed by the Deputy Collector (Land-6 Plan) at Himatnagar (respondent No.2 herein) on 24th December 1982 in Land-6 Case No.1299 of 1980 as also the order passed by him on 25th March 1983 in that very proceeding as affirmed in revision by the order passed by the Secretary (Appeals), Revenue Department at Ahmedabad (respondent No.1 herein) are under

challenge in this petition under Article 227 of the Constitution of India. By his impugned order of 24th December 1982, respondent No.2 declared the sale transaction entered into between the petitioner and respondent No.3 herein on 2nd January 1976 with respect to one parcel of land admeasuring 638.30 square metres from survey No.145 (part) situated in village Charimala taluka Bhiloda district Sabarkantha (the disputed land for convenience) to be invalid. By his impugned order of 25th March 1983, respondent No.3 imposed penalty of Rs.600 on the petitioner herein for breach of section 73-AA read with section 73-A of the Bombay Land Revenue Code, 1879 (the Code for brief).

2. The facts giving rise to this petition move in a narrow compass. The disputed land originally belonged to respondent No.3 herein. The petitioner purchased it under a sale deed executed on 22nd January 1976 for Rs.600. It appears that section 73-AA of the Code came to be inserted by Gujarat Act No.37 of 1980 (the Amending Act for brief) with effect from 26.12.1980. The sale transaction entered into between the petitioner and respondent No.3 herein on 22nd January 1976 was found to be in contravention of section 73-AA of the Code. Thereupon, respondent No.2 issued one show cause notice of 19th November 1982 with respect to the proceeding under section 73-AA read with section 73-A of the Code. The proceeding arising therefrom came to be registered as Land-6 Case No.1299 of 1980. After holding the necessary inquiry, by his order passed on 24th December 1982, respondent No.2 came to the conclusion that the sale transaction in question was in contravention of section 73-AA read with section 73-A of the Code and it was therefore declared to be invalid and the land was ordered to vest in the State Government as respondent No.3 was disinclined to have it back. Its copy is at Annexure-C to this petition. Pursuant thereto, a show cause notice was issued some time in January 1983 calling upon the petitioner why fine should not be imposed on him for breach of section 73-AA read with section 73-A of the Code. Its copy is at Annexure-F to this petition. Thereafter, by his order passed on 25th March 1983, respondent No.2 imposed penalty of Rs.600 on the petitioner herein for breach of section 73-AA read with section 73-A of the Code. Its copy is at Annexure-B to this petition. The aggrieved petitioner carried the matter in revision before respondent No.1 under section 211 of the Code. By his order passed on 30th May 1983 in the aforesaid revisional proceeding, respondent No.1 rejected it. Its copy is at Annexure-A to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the orders at Annexures-B and C to this petition as affirmed in revision by the order at Annexure-A to this petition.

3. Learned Advocate Shri Vakharia for the petitioner has

made a grievance that the impugned order has been passed more than six years after the date of the sale transaction and it could not have been passed beyond a period of three years in view of section 73-AA (4) of the Code. I think this submission urged before me by learned Advocate Shri Vakharia for the petitioner has to be stated only to be rejected. The reason therefor is quite simple. Section 73-AA of the Code came to be brought on the statute book by virtue of the Amending Act with effect from 26th December 1980. That date has been referred to as "the said date" for the purposes of sub-section (4) thereof. The prescribed period of limitation of three years has to be counted from "the said date" or the date of sale transaction whichever is later. In the present case, the later date would be "the said date" which is 26th December 1980. The show cause notice was admittedly issued on 19th November 1982 and the impugned order came to be passed on 24th December 1982. That was certainly within the prescribed period of three years from "the said date" for the purposes of section 73-AA (4) of the Code.

4. It has then been urged by learned Advocate Shri Vakharia for the petitioner that by the Amending Act past transactions are upset and that may not be constitutionally valid. I think this submission also cannot be accepted for the simple reason that the Amending Act figures at serial No.218 in the Ninth Schedule appended to the Constitution of India. It is thus placed beyond the pale of challenge as to its constitutionality qua Part-III thereof. In that view of the matter, challenge to the constitutional validity of the Amending Act on the ground of contravention of any fundamental right guaranteed by Part-III of the Constitution of India cannot be entertained.

5. It is true that the petitioner's revisional application has not been considered on the ground that the orders at Annexures-B and C to this petition were passed in accordance with the mandate given by the State Legislature. Since the impugned orders were passed by an authority subordinate to the State Government, the same were amenable to revision under section 211 of the Code. The revisional application of the petitioner ought not to have been thrown out on the ground that, since the impugned orders were in accordance with the mandate of the Government, they could not be revised under section 211 of the Code.

6. Ordinarily, on this ground the petition ought not to have been accepted and it ought to have been remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law. I have not chosen to do so for the simple reason that the extraordinary jurisdiction conferred on this court under Article 227 of the Constitution of India is discretionary in nature. The impugned orders at Annexures-B and C to this petition are found to be quite legal and valid. They

are challenged in this petition independently of the order at Annexure-A to this petition passed in the revisional proceeding. Since the impugned orders at Annexures-B and C to this petition are found to be quite legal and valid, no useful purpose will be served by remanding the matter to respondent No.1 for his fresh decision on merits of the matter. That would be an exercise in futility.

7. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs. The ad-interim relief stands vacated.

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